



DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

Docket ID OCC-2017-0008

RIN 1557-AE15

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-1574]

RIN 7100-AE84

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AE58

Community Reinvestment Act Regulations; Correction

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; correction.

SUMMARY: This document supplements and corrects the preamble of the final rule that was published in the **Federal Register** on November 24, 2017, entitled “Community Reinvestment Act Regulations.”

DATES: Effective [insert date of publication in the Federal Register] and applicable beginning January 1, 2018.

FOR FURTHER INFORMATION CONTACT:

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Board: Amal S. Patel, Senior Supervisory Consumer Financial Services Analyst, Division of Consumer and Community Affairs, (202) 912-7879; Cathy Gates, Senior Project Manager, Division of Consumer and Community Affairs, (202) 452-2099, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898-6859; Sharon B. Vejvoda, Senior Examination Specialist, Examination Branch, Division of Depositor and Consumer Protection, (202) 898-3881; Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424; or Sherry Ann Betancourt, Counsel, Legal Division, (202) 898-6560, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

This document supplements and corrects the **SUPPLEMENTARY INFORMATION** section of the final rule entitled “Community Reinvestment Act Regulations” (the CRA final rule), published on November 24, 2017, Federal Register Document 2017-25330 (82 FR 55734),

by the OCC, the Board, and the FDIC (collectively, the Agencies), by addressing two additional comments that were timely submitted but inadvertently not included in the rulemaking record of the CRA final rule. The sections of this correction document are effective as if they had been included in the **SUPPLEMENTARY INFORMATION** section of the CRA final rule, effective January 1, 2018.

II. Waiver of Proposed Rulemaking and Waiver of 30-Day Delayed Effective Date

The Agencies ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). Nevertheless, an agency can waive this notice and comment procedure if it finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of its findings and reasons in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of a final rule after the date of its publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The Agencies do not believe that this correction document constitutes a rule that would be subject to APA notice and comment or delayed effective date requirements. The document corrects and supplements the Agencies' discussion of public comments in the **SUPPLEMENTARY INFORMATION** section of the CRA final rule and does not make any changes to the regulatory text in the CRA final rule or otherwise alter the CRA final rule's effect. As a result, this correction document is intended to ensure that the CRA final rule's

SUPPLEMENTARY INFORMATION section accurately reflects the record of comments received and the Agencies' responses.

Moreover, even if the notice and comment and delayed effective date requirements applied to this rule, the Agencies find that there is good cause to waive those requirements because they are unnecessary as the CRA final rule had been previously subjected to the notice and comment procedures. As noted above, the Agencies are merely supplementing and correcting a discussion of public comments in the **SUPPLEMENTARY INFORMATION** section through this correction document. The Agencies are not making any changes to the regulatory text in the CRA final rule. Therefore, the Agencies find it unnecessary to undertake further notice and comment procedures with respect to this correction document.

III. Summary of Errors

In the **SUPPLEMENTARY INFORMATION** section of the CRA final rule, the Agencies discussed amendments to their Community Reinvestment Act (CRA) regulations. The Agencies referenced two public comments received in response to the Notice of Proposed Rulemaking for those amendments¹ and provided responses to those comments. However, due to an inadvertent clerical error, the Agencies did not become aware of two additional comment letters that were timely submitted until after the Agencies had finalized and issued the amendments.

After analyzing the two additional comment letters, the Agencies have determined that no changes to the regulatory text in the CRA final rule are necessary. However, the Agencies are revising the administrative record to include the correct number of public comments received, the analysis of all comments received, and the Agencies' responses to the comments.

¹ 82 FR 43910 (Sept. 20, 2017).

IV. Correction of Errors

1. On page 55734, the third full paragraph in the third column is revised to read as follows:

“Together, the Agencies received four comment letters on the proposed amendments. One comment was from a community organization, two comment letters were from industry trade associations, and one comment was from a financial institution. Commenters generally supported the changes proposed by the Agencies, although each also raised concerns regarding certain aspects of the proposed rule and made other suggestions not related to the proposal. As explained below, the Agencies are finalizing the amendments as proposed.”

2. On page 55735, the second full paragraph in the third column (continued in the first column on page 55736) and the first full paragraph in the first column on page 55736 are revised, and one paragraph is added following them to read as follows:

“The Agencies received three comment letters addressing this proposed revision. Two of the commenters supported the Agencies’ efforts to conform the definition of “home mortgage loan” in the Agencies’ CRA regulations to the scope of reportable transactions in Regulation C; one commenter opposed it. Of the two commenters supporting the proposed amendments, a community organization noted that some banks expressed concern that including home equity products (closed-end home equity loans and open-end home equity lines of credit) in CRA evaluations could have the effect of lowering the overall percentage of home mortgage loans made to low- and moderate-income borrowers and suggested that the Agencies consider evaluating home equity lending separately from other types of home lending. This commenter also urged the Agencies to consider loan purchases separately from originations during the CRA evaluation. A trade association opposed the proposed amendment to the “home mortgage loan”

definition. This commenter recommended that data related to home equity products not be included in the CRA reports provided to the Agencies and the Agencies' analysis of home mortgage loans for purposes of the CRA evaluation. The commenter suggested that the Agencies only consider home equity-related data at the option of the financial institution. The commenter stated that treating home equity products in the same manner as purchase money mortgages or other real estate-secured lending fails to address the significant differences in the availability and use of these products across different geographies and income.

“The Agencies have considered all comments and are finalizing the amendment to the “home mortgage loan” definition as proposed. First, the commenter’s suggestion to consider home mortgage loan purchases separately from loan originations would require a change to the lending test in the CRA regulations (12 CFR 25.22, 195.22, 228.22, and 345.22), which is beyond the scope of the proposed amendments. Second, excluding home equity loans and home equity lines of credit from the “home mortgage loan” definition would create an inconsistency between the CRA and HMDA regulations and a separate reporting requirement for CRA reporters that are also HMDA reporters. The change in the “home mortgage loan” definition does not require that the Agencies evaluate home mortgage loans with different purposes (*e.g.*, home purchase, refinance, home improvement) the same during the CRA evaluation. Instead, the Agencies note that, as with all aspects of an institution’s CRA performance evaluation, the Agencies will consider the performance context of the financial institution when evaluating its performance related to home mortgage lending, including home equity products. The Agencies emphasize that performance context may include additional information to explain how various loan products may impact bank performance. The Agencies believe that the commenters’

concerns can be addressed effectively through the supervisory process. Accordingly, the Agencies are finalizing the revised definition of “home mortgage loan” as proposed.

“As we stated in the proposed rule, the Agencies have relied on the scope of HMDA-reportable transactions to define “home mortgage loan” in the CRA regulations, in order to reduce burden on institutions by avoiding unnecessary costs and confusion, and have made conforming changes when the scope of HMDA-reportable transactions has changed, provided that the revised terms continue to meet the statutory purposes of the CRA. The Agencies are aware that the Bureau announced its intention to open a rulemaking to reconsider various aspects of the 2015 HMDA Rule in its December 21, 2017, Public Statement on Home Mortgage Disclosure Act Compliance, which is available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/>. The Agencies will continue to review and monitor any new developments, including any amendments made to the cross-referenced definitions in HMDA and Regulation C that impact the CRA regulations, to ensure that such cross-referenced terms continue to meet the statutory objectives of the CRA.”

3. On page 55736, the first and second full paragraphs in the second column are revised and two paragraphs are added following them to read as follows:

“The Agencies received three comments addressing the proposed revision. These commenters supported amending the definition of “consumer lending” in the Agencies’ CRA regulations to conform to changes in the scope of loans reportable under Regulation C, which will be effective January 1, 2018, but made additional suggestions, including some not related to the proposal. A trade association urged the Agencies to consider automatically home improvement loans not secured by a dwelling if the financial institution opts to have them

considered. This commenter also suggested that if the financial institution opts not to have such loans considered, then the Agencies should not require the institution to produce data on those loans for CRA evaluation. A community organization suggested that the Agencies should have examiners evaluate consumer lending, including home improvement lending not secured by a dwelling, during CRA exams when such lending constitutes a “significant amount” of the bank’s business rather than a “substantial majority,” as is currently required under 12 CFR __.22(a)(1). Another trade association encouraged the Agencies to create a fifth category under the “consumer loan” definition to take the place of the “home equity loan” category, which the Agencies proposed to remove as a result of home equity loans and home equity lines of credit being included in the amended definition of “home mortgage loan.”

“The Agencies have considered the comments and are finalizing the definition of “consumer lending” as proposed. First, the commenters’ suggestions to defer always to the financial institution on the inclusion of unsecured home improvement loans and to change “substantial majority” to “significant amount” would require a change to the CRA regulations beyond the scope of the proposed amendments. Specifically, consumer loans are considered in the large bank lending test under 12 CFR __.22(a)(1) under two circumstances: “if the bank has collected and maintained [data], as required under 12 CFR __.42(c)(1), and elects to have those loans considered” or “[i]f consumer lending constitutes a substantial majority of a bank’s business.” 12 CFR __.22(a)(1). Thus, in the case of financial institutions evaluated under the large bank lending test, following these commenters’ recommendations would require a regulatory change in the retail lending test under 12 CFR __.22(a)(1), which was not proposed.

“Further, in regard to the commenter’s suggestion to use “significant amount” instead of “substantial majority,” loan products evaluated in the small and intermediate small bank tests are

generally based on the financial institution's major product lines, or primary products, whichever term applies depending on the supervising agency. The categorization of consumer loans by type applies solely to financial institutions evaluated using the large bank lending test. The selection of major product lines, or primary products, for small and intermediate small banks typically involves a review of loan originations during the evaluation period, by loan type, along with a discussion with bank management to understand the bank's business focus. As a result, examiners already may include or exclude home improvement loans in evaluating bank performance if they are not a major product line, or primary product, as applicable.

“Second, the Agencies do not believe that creating a fifth, “home improvement,” category of consumer loans is warranted given the flexibility already provided through the supervisory process. Additionally, creating a separate “home improvement loan” category of consumer loans could result in additional burden for many financial institutions, particularly community banks, through the separate tracking of loans and could result in a double counting of loans, under HMDA and CRA, for home improvement purposes that are secured by a dwelling. For these reasons, the Agencies opted to consider home improvement loans not secured by a dwelling included in evaluating performance under the large bank lending test under the existing consumer loan categories of “other secured” and “other unsecured,” rather than to create a new category of consumer loans. Accordingly, the Agencies are finalizing the definition of “consumer lending” as proposed. We note, however, that although the Agencies are not adopting changes pursuant to the commenters’ recommendations, the Agencies regularly review examination policies, procedures, guidance, and the CRA regulations to better serve the goals of the CRA.”

4. On page 55736, the first full paragraph in the third column is revised to read as follows:

“The Agencies received two comments on the proposed changes to the CRA public file content requirements. One trade association supported the Agencies’ efforts to streamline the public file content requirements to make it consistent with the new HMDA public disclosure requirements. Another trade association suggested that because financial institutions will no longer need to provide HMDA Loan Application Registers to the public, financial institutions should also not be required to produce their CRA Loan Application Registers (CRA LARs) so as to reduce regulatory burden. Changing the requirements in the CRA public file with respect to CRA LARs would require a regulation change that was not proposed by the Agencies and did not have the benefit of notice and comment. Accordingly, the Agencies are adopting the revisions as proposed.”

Dated: March 30, 2018.

Joseph M. Otting,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 13, 2018.

Ann E. Misback,
Secretary of the Board.

Dated at Washington, D.C., this 12th of March, 2018.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

BILLING CODES:

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Board: 6210-01-P (33%)

FDIC: 6714-01-P (33%)

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